

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE HONORABLE TERI L. JACKSON

DEPT. 503

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JASON EVERETT THOMPSON and WIRED)
 REAL ESTATE GROUP, INC.,)
)
 PLAINTIFFS,)
) No. CGC-11-514980
 VS.)
)
 DEAN GREGORY ASIMOS,)
 dba DRAKE REALTY,)
)
 DEFENDANT.)
 _____)
 AND RELATED CROSS-ACTION.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

February 4, 2016

ANGELA POURTABIB, CSR No. 13714
 403806



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16 MOTIONS
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24 Reported by: ANGELA POURTABIB, CSR No. 13714
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1 APPEARANCES:

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1 Thursday, February 4, 2016

2:25 p.m.

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3 THE COURT: Calling the trial department motion
4 calendar line 1, Jason Everett Thompson, et al., versus
5 Dean Gregory Asimos, case No. 514980, Plaintiff's Motion
6 for Attorneys' Fees and Costs. Counsel, please state your
7 appearances.

8 MR. KYLE: Good afternoon, Your Honor. Stephan
9 Kyle and Andrew Winetroub on behalf of the plaintiffs.

10 MR. WINETROUB: Good afternoon.

11 MS. BARSOTTI: Jessica Barsotti on behalf of the
12 defendant who is also present.

13 THE COURT: Okay. All right. I have read and
14 considered the moving papers as well as the opposition.
15 And I will note for the record -- forgive the Court
16 starting so late. I'm doing, as you know, now, a new
17 assignment down at the Hall of Justice, so literally I
18 just finished my calendar and dashed over here.

19 And so I received the oppositions. I will note
20 that the opposition was filed late, and, furthermore, the
21 Court did not receive a courtesy copy as required under
22 our local rules. However, I do note that plaintiff, you
23 did receive it, so I don't believe there has been any
24 prejudice, but the Court will note this for the record.

25 MR. KYLE: That's fine, Your Honor. We received

1 it. We received it a little bit late, but that's why our
2 reply is a day or so late.

3 THE COURT: I understand. Okay. Anything
4 further you wish to --

5 MR. KYLE: Your Honor, if you'd like me to
6 address the merits, I'd be happy to.

7 THE COURT: Well, yeah. Or can I be specific?
8 Where the Court is having -- not an issue, but there was a
9 request, and if you can -- and I'll get to it
10 specifically. It was prior to this motion being put on
11 our calendar that started this back in August. It was
12 almost the negotiations that you were doing with defense
13 counsel. Do you know the period of time I'm talking
14 about? Sometime in July.

15 MR. KYLE: Yes, Your Honor.

16 THE COURT: Oh, here it is. You billed for the
17 July -- around July 2015 before this motion was filed, if
18 I'm not mistaken. And can you tell me how does that
19 relate to the matter before this Court?

20 MR. KYLE: Well, Your Honor, that's the conduct.
21 We were trying to avoid the motion for contempt and OSC in
22 the first place, and that was sort of the final attempt.
23 Simultaneously with doing that, we were contemplating
24 bringing a motion for order to show cause re contempt, but
25 according to my review of the records, it looks like

1 there's a total of 1.7 hours that were expended by me
2 during that period of time.

3 THE COURT: I have the amount of \$614.50; is that
4 an approximation?

5 MR. KYLE: That sounds about right, Your Honor.

6 THE COURT: And then that includes your time as
7 well as Mr. Kyle's time?

8 MR. WINETROUB: Mr. Winetroub.

9 THE COURT: Right. Yes. Excuse me. Yours and
10 -- yours is \$187.50 and Mr. Winetroup --

11 MR. WINETROUB: Winetroub.

12 THE COURT: "-troub" is 429 for that, period, if
13 I'm not mistaken, making it a total of \$614.50.

14 MR. KYLE: I'll take your word for it, Your
15 Honor. It sounds about right.

16 THE COURT: Okay. And then did you ask for
17 postage? Did I see a \$34 request for postage? Can you
18 tell me the --

19 MR. KYLE: Well, there were some large filings,
20 and I believe there's also -- I don't have it broken down
21 here, Your Honor.

22 THE COURT: It was \$34 and something cents.

23 MR. KYLE: Yeah I have \$30.48 here in our
24 declaration, and that is --

25 THE COURT: Proposed.

1 MR. KYLE: Yeah. So some of the papers
2 themselves were thick, so it would -- you know, to have
3 them delivered --

4 THE COURT: Is that authorized?

5 MR. KYLE: Is postage authorized?

6 THE COURT: Yes.

7 MR. KYLE: Well, the statute calls for reasonable
8 attorneys' fees and costs.

9 THE COURT: Okay.

10 MR. KYLE: It doesn't specify which costs, and we
11 tried to be judicious in the costs that we requested.
12 But, Your Honor, that's one of the cost items that our
13 side incurred.

14 THE COURT: And then you also asked for costs on
15 the -- learning to e-file? Or doing the procedure to
16 e-file? Did I misread that?

17 MR. KYLE: Learning to e-file?

18 THE COURT: Well, not learning to e-file, but the
19 whole learning the process -- implementing the process to
20 e-file documents. Did I miss that? Maybe I did.

21 MR. KYLE: I do not --

22 THE COURT: I'm trying to break down -- you know,
23 I'll be honest with you, when I left private practice, I
24 thought I would never see billable hours and costs ever
25 again. But I thought I read somewhere...

1 MR. KYLE: Yeah, there should not be any learning
2 curve time in here, Your Honor. This is time that was
3 directly related to the contempt proceedings.

4 MS. BARSOTTI: Your Honor, if I may? On 8/25/15,
5 2.1 hours regarding SF Court accepting the file, legal
6 research, and correspondence regarding electronic service.

7 THE COURT: I shouldn't say the word "learning to
8 e-file," but just e-filing.

9 MR. KYLE: Your Honor, part of -- well, first of
10 all, if necessary, I can have Mr. Winetroub address this
11 by way of representation, or we can put him under oath,
12 and he can tell us exactly what that entry was related to,
13 but I do not think that we were billing the client nor are
14 we requesting time for -- to get up to speed on procedures
15 for e-filing.

16 THE COURT: Okay. All right. Maybe I used the
17 wrong word, but I just saw that and I was thinking, "Is
18 that a part of the costs?"

19 How much was that that you billed at?

20 MR. KYLE: At 8/25, Your Honor, that looks like
21 it's -- the total entry of that date is 2.1 hours for Mr.
22 Winetroub. But that includes additional work on there as
23 well.

24 THE COURT: Okay. I had some -- those were some
25 of my specific concerns, but if you wish to argue to the

1 Court, you're more than happy to address the substantive
2 issues.

3 MR. KYLE: Well, thank you, Your Honor. I
4 appreciate that. You know, we did go through painstaking
5 effort, Your Honor, to break out down to the very tenth of
6 an hour every single bit of time that was expended with
7 respect to the contempt proceedings. And, you know, I
8 would also note that this process has been going on now
9 for close to six months.

10 We've had -- this is our sixth hearing in the
11 matter, and, you know, it's -- we also provided the
12 research about the hourly rates, that they're reasonable
13 in this community. I would hope -- I'm sure that you've
14 seen enough lawyers come through requesting attorney time
15 that you would agree that given our experience levels that
16 those are very reasonable rates.

17 But we certainly have additional information
18 there that we can provide the Court if necessary. You
19 know, we requested a total of 64 -- just north of \$64,000
20 related to the contempt proceedings.

21 Your Honor, in my professional judgment, all of
22 this time was both necessary and reasonably incurred in
23 achieving the results that were achieved. We certainly
24 could have done less work and not achieved the results,
25 but each and every bit of time that we expended was

1 necessary to accomplish what we needed to on behalf of our
2 client.

3 I would also throw in, Your Honor, that a big
4 part of the reason why hours are as high as they are is
5 because we've been dealing with some very obstructive
6 tactics by defense counsel. And I would go back to the
7 very beginning when we tried to get her to get her client
8 to send us an unaltered form of the authorization, and all
9 we get back is, "He's already signed everything. If you
10 have a problem, talk to Carr McClellan. They're the ones
11 that are holding up this process."

12 Which, you as you know, Your Honor, is not the
13 case. When she opposed our original motion for an order
14 to show cause, she seeks sanctions against my firm. That
15 was completely -- I still can't believe that that was the
16 defense tactic.

17 You'll remember that she did a filing of a notice
18 of lodging but then actually didn't lodge the document at
19 the same time or contemporaneously requiring us to figure
20 out with the court clerk, has it been lodged? Has it not
21 been lodged? What's the effect of a notice when the
22 document hasn't been lodged? These things all take time,
23 Your Honor, to do it the right way.

24 The defense's reliance on both the appeal and the
25 bankruptcy proceedings as a defense to the contempt charge

1 complicated the matter. There is obviously a lot of paper
2 that's been filed in both the bankruptcy proceedings and
3 in the appeal that were required to be analyzed in order
4 to present the Court with the right information around the
5 contempt proceedings.

6 Your Honor, the very day that you issued the
7 judgment of contempt, you ordered the defendant to sign
8 and deliver that day an unaltered form of the
9 authorization. Counsel did not deliver that to us. It
10 wasn't delivered to us the next day or even the day after
11 that. We were then required to bring a notice of
12 noncompliance, so we had to file yet another document with
13 the Court.

14 When we finally did receive a signed copy of the
15 authorization, it wasn't dated, it wasn't notarized,
16 leading to authenticity issues, Your Honor. It didn't
17 even come with a cover letter from counsel. It was just
18 simply stuffed in an envelope.

19 Ultimately, Your Honor -- well, and maybe the
20 biggest thing to note here is there was also, and you'll
21 recall this, a hearing on November 13th at which time you
22 ordered the parties to return. You coordinated with
23 counsel's calendar, you coordinated with our calendar. We
24 were here, Your Honor, for the hearing. Counsel and her
25 client did not show up for that hearing.

1 That then required us to participate in a bench
2 warrant process. So, Your Honor, this is not just simply
3 a motion and a hearing on the motion. This has been an
4 extended period of time. We were required to prepare
5 evidence. We were prepared. We thought that Mr. Asimos
6 would actually get on the stand and give testimony as to
7 why he did not comply with the Court's original order and
8 injunction.

9 We prepared a cross-examination. We were
10 prepared to get the information and evidence that we
11 needed to present the Court to substantiate the contempt
12 charge.

13 So there was a lot of work, Your Honor, required
14 by this, and I would say that, quite frankly, it's almost
15 miraculous that we were able to get it down in the amount
16 of \$64,000. And I don't mean that with any sort of light
17 touch whatsoever. I've been doing litigation for a long
18 time now, and I've seen some very big attorney fee bills,
19 and I would say this one is modest in comparison.

20 Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 Would you care to be heard?

23 MS. BARSOTTI: Yes, Your Honor. First of all, I
24 don't believe that there were any obstructive tactics
25 taken whatsoever by the defendant in this case. Asking

1 for sanctions was a legitimate request not intending to
2 create any obstruction whatsoever.

3 Both I and my client believed that this entire
4 matter was stayed by the appeal, which we still believe
5 that. All of our responses to this motion were simply in
6 response to the legal arguments that were being made.

7 The issue of lodging the document was supposedly
8 researched and brought out initially by Mr. Kyle. It was
9 not in response to our notice that was provided to the
10 Court, so there should be no additional research needed on
11 that point.

12 Second of all, Mr. Kyle is handling the appeal in
13 this case, so he is very well aware of all the issues in
14 the appeal, did not need to do extra research regarding
15 what the appeal was about or what are the issues in the
16 appeal. He's very well-versed in all of those things.

17 The issue of the Court ordering my client to sign
18 and deliver the document the day of our hearing, when we
19 went off the record that day, the Court told us that we
20 needed to sign and deliver it by November 9th, and so I
21 take issue with the fact that this is the interpretation
22 that Mr. Kyle has made.

23 THE COURT: And I'm going to take issue with you.
24 I do remember very specifically that it was to be done
25 that day.

1 MS. BARSOTTI: And then what was said off the
2 record, Your Honor?

3 THE COURT: That I would stay the thousand
4 dollars because if we could just get it signed today, it
5 would be --

6 MS. BARSOTTI: By the 9th, you said, Your Honor.
7 That is what I recall.

8 In any event, ordering my client to sign and
9 deliver the document that day would prevent him from
10 taking any recourse against the decision because Mr. Kyle
11 had informed me if I get that order, I will go collect the
12 money the moment I get the signed authorization, which
13 would leave my client in the position of having no
14 opportunity to file a writ or file anything with regards
15 to your order.

16 THE COURT: Why would that stop him from legally
17 challenging it --

18 MS. BARSOTTI: Because --

19 THE COURT: Counsel. If he gets the money, and
20 the Court's wrong, and he spends it, he's going to be
21 liable to your client, so it doesn't stop you legally from
22 filing your writ. And by the way, did you file a writ?

23 MS. BARSOTTI: No, we did not, Your Honor. My
24 client does not have the resources for that unfortunately.

25 The claim that the signed authorization was not

1 notarized, nobody ever said that it needed to be
2 notarized, so I don't understand that.

3 In addition, the former counsel for Mr. Thompson
4 had fully researched and briefed this issue prior and,
5 apparently, charged his client. So Mr. Kyle should have
6 had all of that research available to him in the file,
7 preventing so much extra research that supposedly he did,
8 ten hours of research per page for a contempt motion that
9 had two cases cited in it. That's not reasonable, Your
10 Honor.

11 And I'm sure Your Honor has seen many cases, and
12 this is an unreasonable request, and in my 16 years as an
13 attorney, this case is the most egregious miscarriage of
14 justice that I have seen. And that's all I have to say.

15 THE COURT: Do you care to reply? If you wish
16 to.

17 MR. KYLE: Briefly, Your Honor. On the issue of
18 the appeal, counsel is correct. We are -- we are the
19 counsel of record for the plaintiffs, the -- in the
20 appeal; however, we weren't -- this motion and the
21 reference to the appeal, Your Honor, had nothing to do
22 with the merits of the appeal which is what we're dealing
23 with in the appellate process.

24 Instead, by injecting the appeal into these
25 proceedings, what counsel was attempting to do was

1 essentially leverage that as a procedural defense to our
2 efforts to bring the contempt proceedings.

3 Entirely different context, Your Honor. One is
4 obviously the merits, the other is the procedure. And so
5 it's the procedural aspects of whether or not the appeal
6 had any impact on our ability to proceed in a contempt
7 proceeding was the focus there.

8 Your Honor, I'm not -- I really don't want to get
9 into some of the other things. I obviously disagree with
10 counsel's interpretation of what this Court's orders were.
11 I think you know and I know exactly what you ordered, and
12 their choosing not to abide by that is either a failure to
13 pay close enough attention to what the Court's order is or
14 a complete disobedience. I don't want to speculate any
15 further on that, Your Honor.

16 THE COURT: All right. Submitted?

17 MR. KYLE: Submitted.

18 THE COURT: Okay. The Court finds that it's not
19 -- plaintiff is not entitled to the following: \$614.50
20 for attorneys' fees. I don't see that related to the OSC.
21 I'm also disallowing the \$30.48 for postage and the
22 2.5 hours on August 25th, 2015. The Court is disallowing
23 fees for that amount.

24 However, based upon the noticed motion and
25 arguments and the papers that have been submitted to this

1 Court, the Court finds that the plaintiff has made a
2 sufficient showing for and are entitled to attorneys' fees
3 and costs incurred in connection with this contempt
4 proceeding against the defendant, Dean Gregory Asimos,
5 minus the amount that the Court has already indicated for
6 the record.

7 Prepare the order.

8 MR. KYLE: Thank you, Your Honor. We do have
9 a -- we have a formal order for the Court. We've already
10 shown it to --

11 THE COURT: Does it exclude those amounts?

12 MR. KYLE: It does not, we just have to fill in
13 the blanks. Would you like us to do that before
14 submitting this?

15 MS. BARSOTTI: Your Honor, my client would like
16 to make a statement regarding the equities, if he may? If
17 the Court will allow?

18 THE COURT: I thought we had -- we heard the
19 arguments, and I -- it was submitted.

20 MS. BARSOTTI: I had not said, "Submitted," Your
21 Honor.

22 THE COURT: Oh, I'm sorry. Was there further
23 argument you wish to be made?

24 MS. BARSOTTI: Yes, Your Honor. My client would
25 like to make a statement regarding the equities. Since

1 equitable considerations are appropriate in attorneys'
2 fees motion, he would like to address the Court with some
3 equitable arguments.

4 THE COURT: He can address the Court.

5 MS. BARSOTTI: Thank you, Your Honor.

6 THE COURT: I'm sorry. I thought you said
7 "Submitted." I thought I heard it.

8 MR. ASIMOS: Your Honor, should I sit here and
9 say it, or --

10 THE COURT: You can stand, please.

11 MR. ASIMOS: Stand.

12 Your Honor, I do not have the ability to pay such
13 a fine for these fees. I am financially distressed. I
14 have been in this litigation with the plaintiff for over
15 five years. I've waited over two years in the appeal --
16 Court of Appeal to get an answer.

17 I was a broker. The money that was released to
18 this plaintiff was -- he was an agent, I was a broker.
19 Only an attorney and a real estate broker can collect
20 commissions.

21 I feel that my civil rights have been trampled
22 on. I feel that I have not received a fair trial. I've
23 never -- this is the first I've heard of Mr. Kyle stating
24 that he planned to have a cross-examination and have me
25 provide testimony. I would have prayed for that. I would

1 have loved to have answered his questions. I would have
2 loved to have answered the Court's questions.

3 This -- the -- this gentleman, Mr. Kyle, is also
4 handling the adversary proceeding. It's a constitutional
5 right of mine to file bankruptcy. The Court doesn't have
6 the time or probably the patience to listen to why I filed
7 bankruptcy.

8 When I first stepped into an office here in San
9 Francisco in November of 2009, I've dealt with this
10 plaintiff for all of these years who has created fraud
11 against me, and the judgment that was rendered was unfair.
12 That's why it's in the Court of Appeals.

13 The plaintiff, as a matter of record, stated two
14 years after leaving working under my broker's license that
15 his gross revenues for Wired Real Estate Group was
16 \$100 million. The previous year -- and this is all in
17 writing. 880,000 in 2011. When he was with me for two
18 years, he generated a couple of deals that maybe gave me a
19 few thousand dollars.

20 I have not been treated fairly by this Court in
21 my opinion and with all due respect, nor by the previous
22 judge who heard the case, and I am praying against all
23 hope that the Court of Appeals finds in my favor because
24 this is a major travesty and miscarriage of justice.

25 And for me to pay for contempt, not one question

1 was directed at me, what was in my mind, what was in my
2 thoughts? And I've been left here to pay this law firm
3 and the plaintiff 50, 60, \$70,000 for a box that wasn't
4 checked on a Court of Appeal document.

5 Because that's basically -- I remember, Your
6 Honor, that's what I took from the whole proceedings. Had
7 that box been checked on the injunction, I would have not
8 been found in contempt. Basically, this Court stated that
9 because that box was not checked, because it was an
10 injunction, that I was in contempt.

11 That money sat there, Your Honor, and that money,
12 that hundred thousand dollars was when I was the sole
13 plaintiff as the broker representing Jason Everett
14 Thompson as my agent. Jason Everett Thompson was never a
15 broker when he was working with me. He was an agent.

16 I defended him in that case. Carr McClellan,
17 William Gutierrez, on his advice, I told him I wanted to
18 stop the lawsuit because I found out that Mr. Thompson was
19 not being ethical, and that's when they had me sign a
20 conflict waiver. That money was supposed to be disbursed
21 in an interpleader action or by mutual agreement.

22 This is just an unbelievable miscarriage of
23 justice to me, to my client -- excuse me, to my counselor.
24 I don't have the wherewithal to pay this money. I don't
25 think you want to hear my financial woes and what my

1 burden is on a daily basis with my family because it
2 really probably isn't relevant to this Court, but it's
3 relevant to me. I am unable to pay this law firm, excuse
4 me, 70 -- whatever 50,000, 60,000, whatever it is.

5 And, Your Honor, do you realize that the judgment
6 against me is 624,000? This plaintiff -- this plaintiff
7 has spent over \$350,000 in court fees. It is a matter of
8 record. 300- -- to stop me from getting \$15,000. To stop
9 me from getting as -- also, if the brief was read, and
10 Mr. Kyle knows what's in the brief. He knows that his
11 client deposited over \$500,000 in undisclosed deposits,
12 which is sitting in front of the Court of Appeal right now
13 into a Wells Fargo account when he was working as an agent
14 of mine. All of this was disregarded.

15 There's 37 points of conflict of -- we were
16 objecting to Judge Douglass that he refused to answer. He
17 took over 120 days to give us a statement of decision.
18 120 days after the trial, and then he formalized his
19 statement of decision six months later.

20 I filed this appeal in November of 2013, and I've
21 been waiting patiently. I was in front of Judge Douglass,
22 and I don't know if Mr. Kyle is also stating or telling
23 you or if you understand that Judge Douglass -- Judge
24 Douglass is the one who asked me to sign it and said he
25 would hear me again and give me an opportunity to sign the

1 document.

2 I signed the document, and I added that language
3 because I felt I was being treated unfairly. Simple as
4 that. There was no major intent to injure or hurt anyone.
5 I earned that money from Mr. Thompson and for myself at an
6 85/15 split in favor of Mr. Thompson.

7 I was hoping that this Court was going to see
8 this contempt and wait until the Court of Appeals can run
9 its course. Judge Jaroslovsky, Northern District, he was
10 the bankruptcy judge. And Mr. Kyle knows because he has
11 the motion. And he agreed we can't even go forward with
12 the adversary proceeding because his client is attacking
13 me in bankruptcy court. My constitutional right to file
14 bankruptcy, and he's besmirching my reputation, my
15 character, my integrity, and I've sat here.

16 You don't think I would show up at a court date
17 if I knew there was a court date? If my counselor had
18 made some mistakes, what can I say? Procedurally, maybe
19 some mistakes were made, but they were not intended to
20 upset you, Your Honor, or this Court.

21 I've been dealing with this for many, many years.
22 I'm going a little dry in the mouth here, but I just -- I
23 appreciate and I can't thank you enough for you allowing
24 me without interruption, and I respect you for that, and I
25 thank you very much, Your Honor.

1 THE COURT: Thank you. Anything further?
2 MR. KYLE: No, Your Honor.
3 THE COURT: All right. Thank you. Prepare the
4 order.

5 MR. KYLE: Thank you, Your Honor.

6 MS. BARSOTTI: Thank you, Your Honor.

7 (The proceedings were concluded at 2:53 p.m.)

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COURT REPORTERS CERTIFICATE

2 STATE OF CALIFORNIA)
3 COUNTY OF MARIN) ss.

I, Angela Pourtabib, hereby certify:

7 I am a duly qualified Certified Shorthand
8 Reporter, in the State of California, holder of
9 Certificate Number CSR 13714 issued by the Court
10 Reporters Board of California and which is in full
11 force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

15 I am the reporter that stenographically
16 recorded the testimony in the foregoing
17 proceeding and the foregoing transcript is a true
18 record of the testimony given.

20 Dated: February 11, 2016

Angela Pankratz

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